

**THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Francis Simmons,)	
)	
Plaintiff,)	C/A No.: 0:21-cv-458-RMG
)	
v.)	ORDER AND OPINION
)	
Warden Robinson, Captain McBride,)	
Captain Brown, Officer Flathers,)	
)	
Defendants.)	
)	

This matter is before the Court upon the Magistrate Judge’s Report and Recommendation (“R & R”) that the complaint in this case be dismissed with prejudice for lack of prosecution. (Dkt. No. 47).

The R & R was filed on December 6, 2021, and recommended dismissal of Plaintiff’s complaint for failure to prosecute pursuant to Fed. R. Civ. P. 41(b), as Plaintiff had failed to file a response to Defendants’ pending motion for summary judgment. (*Id.* at 3). Objections to the R & R were due on December 20, 2021.

On December 6, 2021, Plaintiff filed a motion for extension of time to file objections to the R & R. (Dkt. No. 49). On December 9, 2021, the Magistrate Judge granted Plaintiff’s motion, giving Plaintiff until January 31, 2022, to file objections. (Dkt. No. 50). On January 24, 2022, Plaintiff filed a motion to compel. (Dkt. No. 53). The motion to compel addresses Defendants’ motion for summary judgment and states there are issues of material fact with respect to Plaintiff’s claims. (Dkt. No. 53 at 1-2, 4). The motion to compel asks the Court to compel “requested materials” from Defendants. (*Id.* at 1, 3-4) (listing Plaintiff’s six requests for documents from Defendants).

On January 28, 2022, Defendants filed a reply to Plaintiff's motion to compel referencing documents in the record. (Dkt. No. 54) (citing Dkt. No. 39-1, Ex B).

It is **ORDERED** that the Report and Recommendation filed on December 6, 2021 (Dkt. No. 47) is vacated and this case is referred to the Magistrate Judge for further handling.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard M. Gergel
United States District Judge

February 1, 2022
Charleston, South Carolina